



MCI Telecommunications
Corporation

1801 Pennsylvania Avenue, NW
Washington, DC 20006

ORIGINAL

January 13, 1999

EX PARTE OR LATE FILED

Ms. Magalie Roman Salas
Secretary Federal Communication Commission
1919 M Street, N.W.
Washington, DC 20554

EX PARTE PRESENTATION

Re: *In the Matter of Petition of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity, or in the Alternative, Various Other Relief, NSD File L-98-121; CC Docket No. 96-98* ✓

Dear Ms. Salas:

The attached letter was delivered to listed members of the Common Carrier Bureau on January 12, 1999 via *facsimile* to expressed concerns is recent issues in the aboved referenced proceeding.

Please include this letter in the record of these proceedings in accordance with Section 1.1206 (a)(2) of the Commission Rules.

Respectfully submitted,

Mary De Luca
Senior Policy Advisor,
Federal Regulatory, MCI Worldcom, Inc.

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EX PARTE OR LATE FILED

January 12, 1999

Anna M. Gomez
Chief, Network Service Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, NW
Washington, DC 20554

EX PARTE PRESENTATION ***** VIA FAX *****

Re: *In the Matter of Petition of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity, or in the Alternative, Various Other Relief, NSD File L-98-121; CC Docket No. 96-98*

Dear Ms. Gomez:

In an ex parte letter filed on December 22, 1998, SBC declared that it will "accept" a compromise resolution in this proceeding as an alternative to its original request for a waiver to delay introducing interstate intraLATA toll dialing parity in the SBC states. Specifically, SBC proposed that SBC LECs implement interstate intraLATA dialing parity under one of these three conditions:

- Coincident with a state order to implement intrastate intraLATA dialing parity if ordered prior to March 31, 2000;
- Where no such order exists, SBC LECs' will implement interstate intraLATA dialing parity no later than March 31, 2000;
- SBC will not seek any further waivers from the Commission to delay interstate intraLATA dialing parity competition.

However, SBC failed to mention three very important facts along with this proposal:

- Texas and Kansas state law prohibits the state public utility commission from ordering SBC to implement intrastate two PIC until SBC has interLATA authority. See, *Public Utility Regulatory Act, Title II, Texas Utilities Code*, Chapter 55, Subchapter A, Section 55.009(a) and *Kansas Statutes Annotated* § 66-2003 (1997).
- SBC has been extraordinarily effective at prolonging state commission action on intrastate dialing parity. Of the nine states with open intrastate toll dialing parity

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proceeding, five are in SBC territory: Arkansas, California, Missouri, Nevada and Oklahoma.

- SBC remains the only BOC whose state commissions have yet to order intrastate intraLATA dialing parity.

In light of SBC's *fait accompli* to avoid the clear requirements of Section 251(b)(3) of the Act, it is no surprise to see SBC make meaningless commitments to this Commission to implement interstate intraLATA toll dialing parity in some fourteen months hence.

SBC continues to use procedural hoops to backpedal on an obligation that SBC has itself acknowledged: that it is required to open its interstate intraLATA toll market under Section 251(b)(3) of the Act. As SBC recognized as early as May 1996, intraLATA dialing parity is a "necessary component of telecommunications competition," and accordingly, the provisions of the Act require all local service providers "to offer intraLATA and interLATA toll dialing parity.... on or before three years after the enact of the legislation [February, 8, 1999], which ever comes first."¹ Now, as the time nears for SBC to execute what it recognized its legal obligation to be, SBC seeks to stall implementation, to keep its markets closed and to disregard customer choice.

With less than a month until February 8, 1999, not only is SBC's "alternate" proposal an 11th hour effort to avoid competition, but this offer does little to open the SBC LECs' market when required to do so by the FCC rules and by the Act. Nor has SBC attempted to justify its suggested compliance date of March 31, 2000.² In addition, while SBC commits not to seek any additional waivers from the Commission, it does not commit to not using its powers to seek judicial relief in court or to convince other state legislators to follow the lead of Texas and Kansas.

Moreover, SBC continues to ignore the simple fact that the requirement to provide toll dialing parity is established in the Communications Act and not solely by Commission order. As you know, 47 USC § 251(b)(3) requires ALL LECs "to provide dialing parity to competing providers of telephone exchange service and *telephone toll service*" (emphasis added). In addition, Section 271(e)(2)(B) of the Act only temporarily delays the intrastate portion of this duty for one class of carriers, namely the BOCs. Specifically, this section temporarily protects some BOCs in some states from the full force of Section 251(b)(3) until February 8, 1999. After February 1999, the Act no longer provides for a grace period from

¹ Comments of SBC Communication Inc., Relating to Dialing Parity, Number Administration, Notice of Technical Changes, and Access to Rights of Way, CC Docket No. 96-98, at 3 (filed May 20, 1996).

² SBC must demonstrate that there is "good cause" for a wavier of Commission rules. 47 C.F.R. 1.3. In making such a demonstration, SBC faces a "high hurdle" and must demonstrate that "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. Section 52.19 for Area Code 412 Relief*, Order, CC Docket No. 96-98, DA 97-675, rel. Apr. 4, 1997, at ¶ 14, citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, 1159 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972); See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

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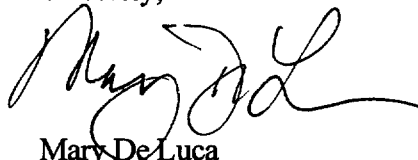
the 251(b)(3) requirement for any class of carriers. Moreover, since the duty to provide toll dialing parity arises from Section 251 of the Act, the Commission cannot waive or forbear from application this requirement as SBC suggests.

For these reasons, the Commission must simply reject this last ditch effort of SBC to yet again pigeonhole implementing what is required by law.

Lastly, the December 22, 1998 ex parte letter from SBC appears, in MCI Worldcom's view, to summarize a meeting held between SBC and Bureau staff, yet there is no indication from the letter that a meeting took place, what topics were discussed and who was present at the meeting, as required by Commission rules. (*See* 47 CFR§1.1206) We recommend that SBC's proposal not be considered as a basis for resolution of the issues in this case until such time that SBC complies with Commission ex parte rules.

Please feel free to contact me at 202.887.3045 with any questions you or your staff may have on this topic.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mary De Luca', with a stylized, flowing script.

Mary De Luca
Senior Policy Advisor,
Federal Regulatory, MCI Worldcom, Inc.

CC: Yog Varma
Kurt Schroeder
Gregory Cook
Robin Smolen
